

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

GREGORY MAYES, an individual,

Plaintiff,

vs.

ELI LILLY AND COMPANY, a corporation;
and DOES 1 through 50, inclusive,

Defendants

) Case No.: 4:14-CV-01759

) Judge Person

) Magistrate Judge Burke

) **PLAINTIFF'S OPPOSITION TO**
) **DEFENDANT'S MOTION TO DISMISS**

Pending before the Court is the motion of defendant Eli Lilly and Company, made pursuant to Fed. R. Civ. P. 8(a), 9(b) and 12(b)(6), to dismiss plaintiff's complaint. Since the filing of defendant's motion, plaintiff has filed an amended complaint as of right pursuant to Fed. R. Civ. P. 15(a)(1)(B). The filing of the amended complaint supercedes the original and renders it a nullity. *See, e.g., Purkey v. Marberry*, 2010 U.S. App. LEXIS 14362 (7th Cir. 2010); *Klyce v. Ramirez*, 852 F.2d 568 (6th Cir. 1988); *Barnes v. Birds Eye Foods LLC*, 2010 U.S. Dist. LEXIS 69579, *2-3 (W.D. MI. 2010) (amended complaint, filed of right within 21 days of service of motion under 12(b), "supercedes the original complaint, which becomes a nullity"). As a necessary consequence, defendant's motion to dismiss the now superseded complaint is moot and must be denied. *See Barnes*, 2010 U.S. Dist. LEXIS 69579 at 3* ("An amended complaint filed after a motion to dismiss has been filed renders the motion to dismiss moot"), *citing Bancoult v. McNamara*, 214 F.R.D. 5, 13 (D.D.D. 2003).

CONCLUSION

For the forgoing reasons, plaintiff respectfully requests that the Court deny defendant's motion to dismiss as moot.

LEESEBERG & VALENTINE

By: /s/ Craig S. Tuttle
Craig S. Tuttle, Esquire
175 South Third Street
Columbus, OH 43215
ctuttle@leesebergvalentine.com
(p) (614) 221-2223
(f) (614) 221-3106

DATED: February 18, 2015

Of Counsel:

Harris L. Pogust, Esq.
T. Matthew Leckman, Esq.
POGUST BRASLOW & MILLROOD, LLC
Eight Tower Bridge, Suite 1520
161 Washington Street
Conshohocken, PA 19428
hpogust@pbmattorneys.com
mleckman@pbmattorneys.com

Michael L. Baum, Esq.
Brent Wisner, Esq.
BAUM, HEDLUND, ARISTEI & GOLDMAN, P.C.
12100 Wilshire Blvd., Suite 950
Los Angeles, CA 90025

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2015, a copy of the foregoing Plaintiff's Opposition to Defendant's Motion to Dismiss was filed electronically. Notice of this filing will be send by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by US mail. Parties may access this filing through the Court's system.

/s/ Craig S. Tuttle
Craig S. Tuttle, Esquire
175 South Third Street
Columbus, OH 43215
ctuttle@leesebergvalentine.com
(p) (614) 221-2223
(f) (614) 221-3106